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House Aging and Long Term Care  
Testimony on HB 2673

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Mr. Chairman and members of the committee, thank you for allowing me to testify about the proposed nursing facility assessment.

The bill as proposed would authorize KHPA to seek federal approval to assess a per bed fee on nursing facilities. This fee or assessment would be paid by the nursing facilities to KHPA on a quarterly basis. KHPA would match the assessment revenue with federal Medicaid dollars to increase payments back to the facilities. The bill requires additions to rates that would restore the 10% payment reduction in the Governor's allotment, to rebase the nursing facility rates based on the existing state plan, to pay the administrative cost of the assessment, and to make other improvements in the quality of care provided. The rate changes would require approval from the Centers of Medicare and Medicaid Services and would have to meet several requirements for provider assessments and rate setting described in regulations. In our experience, the approval process will take between 9 and 12 months.

Over the past 18 months, the KHPA Board of Directors has discussed the implementation of a nursing facility provider assessment as a means to maximize Medicaid dollars for Kansas. The Board also considered the opposing views on the merits of such a tax as presented by the two nursing facility trade associations: the Kansas Association of Homes and Services for the Aging; and the Kansas HealthCare Association. In November 2008, the Board determined that a workgroup be convened to develop an impact analysis and implementation options for a nursing facility provider assessment. The Board also agreed that the following objectives should be met for such a proposal: a) compliance with the Center of Medicare/Medicaid Services policies; b) the proposal would be data driven; c) sister state Medicaid agencies would be supportive; and d) the proposal would align with KHPA goals to improve access and quality of care. The Nursing Facility Technical Assistance Workgroup, led by the Department on Aging, convened in early 2009. A final report and analysis was presented to the KHPA Board in November 2009. After further discussion at the January 2010 Board meeting, it was clarified that the Board was being asked to accept the technical composition of the analysis but would not be taking action to advance this assessment forward. The Board then voted to Receive the Final Report as prepared by the NF Technical Assistance Workgroup in January 2010, We have provided copies of testimony that our Board Chair, Joe Tilghman, provided to the House Appropriations Committee describing the process the Board carried out to review nursing facility assessment options.

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KHPA, as the single state Medicaid agency, would be responsible for overseeing the approval process for the nursing facility assessment. The bill gives KHPA the responsibility to get the assessment through the federal approval process, assess the nursing facilities, collect the money, and work with the panel created by the bill to oversee the distribution of the money. It is within our scope of responsibility to determine if the assessment is consistent with federal rules and provide support to the approval process. However, we have delegated responsibility for the nursing facility program to the Kansas Department on Aging (KDOA). Staff at the KDOA have regular contact with nursing facilities and perform the entire process to set rates under the current Medicaid state plan. KDOA is in a much better position to oversee the direct processes of charging and collecting the assessment and following the process for calculating new nursing facility rates. This is consistent with the current relationship between KHPA and KDOA. The fiscal note prepared for the bill was done in concert with KDOA and reflects the additional staff and resources needed by either agency to implement the provisions of SB 546. If the staff and funds are approved for KHPA, we intend to transfer the positions and funding to KDOA to have the assessment administered by the agency with the most direct responsibility over that part of the Medicaid program.

One final comment about the bill as proposed is a potential issue with the drafted bill language. In subsection (d)(5) on page 3, line 30 of the bill would require that the increased rates should “first be made to reimburse the portion of the assessment imposed.” One of the federal requirements for a provider assessment is that a provider can not be held harmless from the imposition of a tax or the effect of a tax. CMS may interpret that line of the bill to mean that the state intends to ensure that each provider gets all of their tax payment back before any other payments are made. This is by definition a hold harmless and would not be approvable. KHPA would suggest that this section be removed from the bill.

Thank you for accepting my testimony and I would be happy to answer questions.